

**STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD**

**DIVISION OF WATER RIGHTS**

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In the Matter of License 3299 Permit 6542 (Application 10856)

**Jerry Don Ellsworth**

**ORDER**

**ORDER AMENDING LICENSE BY CORRECTING THE POINT OF DIVERSION,  
PLACE OF USE, PURPOSE OF USE AND BY ADDING AN ANNUAL AMOUNT AND  
STANDARD LICENSE TERMS**

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SOURCE: Fiddle Creek

COUNTY: Sierra

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**WHEREAS:**

1. License 3299 was issued to W. R. Ellsworth on December 18, 1951, pursuant to Application 10856 and was recorded with the County Recorder of Sierra County on December 20, 1951.
2. License 3299 was subsequently issued to Addie V. Ellsworth Newberg on February 17, 1978, and then to Jerry Don Ellsworth on November 26, 1985.
3. The Division of Water Rights (Division) conducted an inspection of the project covered by License 3299 on August 14, 2000. This inspection found that corrections in the purpose of use, place of use and point of diversion authorized by this license are necessary and that a term limiting the total quantity of water diverted under this license should be added.
4. The State Water Resources Control Board (SWRCB) will also add its standard continuing authority and water quality objective terms and a term to prevent any act which results in the taking of a threatened or endangered species that have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act.

**NOW, THEREFORE, IT IS ORDERED THAT:**

License 3299 is amended to include the following changes, corrections and new or revised terms and conditions:

1. The purpose of use authorized by this license is corrected as follows:

Domestic, Irrigation and Mining use.

2. The following limitation on the total amount of water diverted under this license is added as follows:

The total quantity of water diverted under this license shall not exceed 57 acre-feet per year.

3. The Point of Diversion shall be corrected as follows:

By California Coordinates System of 1927, Zone 2, North 678,465 feet and East 2,284,122 feet, being within SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 8, T19N, R9E, MDB&M.

4. The Place of Use shall be corrected as follows:

Domestic and Mining use within NW $\frac{1}{4}$  of NE $\frac{1}{4}$  and NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , and irrigation of 5 acres within NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , all within Section 17, T19N, R9E, MDB&M.

5. The Point of Release of water from the conveyance system shall be as follows:

Water used for mining purposes is to be returned to the North Yuba River within the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 17, T19N, R9E, MDB&M, and excess conveyance losses shall be returned to the North Yuba River within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of said Section 17.

6. The continuing authority condition, is updated to read as follows:

Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against

reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

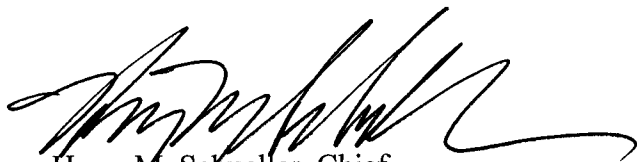
The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

7. The water quality objectives condition, is updated to read as follows:

The quantity of water diverted under this license is subject to modification by the SWRCB if, after notice to the licensee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to division 7 of the California Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

8. An endangered Species term is added to read as follows:

This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (California Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.



Harry M. Schueller, Chief  
Division of Water Rights

Dated: **MAR 14 2001**



STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

## License for Diversion and Use of Water

APPLICATION 23508

PERMIT 16509

LICENSE 10856

THIS IS TO CERTIFY, That

CUVAISON, INC.  
P. O. BOX 466, CALISTOGA, CALIFORNIA 94515

HAS made proof as of AUGUST 18, 1976 (the date of inspection)  
to the satisfaction of the State Water Resources Control Board of a right to the use of the water of  
(1) NAPA RIVER AND (2) GARNETT CREEK IN NAPA COUNTY

tributary to (1) SAN PABLO BAY AND (2) NAPA RIVER THENCE SAN PABLO BAY

for the purpose of IRRIGATION, FROST PROTECTION AND HEAT CONTROL USES  
under Permit 16509 of the Board and that the right to the use of this water has been perfected  
in accordance with the laws of California, the Regulations of the Board and the permit terms; that the  
priority of this right dates from MAY 18, 1970 and that the amount of water to which  
this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated  
purposes and shall not exceed SEVENTEEN AND SIX-TENTHS (17.6) ACRE-FEET PER ANNUM,  
TO BE COLLECTED FROM NOVEMBER 15 OF EACH YEAR TO MARCH 1 OF THE SUCCEEDING  
YEAR. THE MAXIMUM WITHDRAWAL IN ANY ONE YEAR SHALL NOT EXCEED 17.6 ACRE-FEET.  
THE MAXIMUM RATE OF DIVERSION TO OFFSTREAM STORAGE SHALL NOT EXCEED 0.66 CUBIC  
FOOT PER SECOND.

### THE POINTS OF DIVERSION OF SUCH WATER ARE LOCATED:

- (1) NORTH 2,600 FEET AND EAST 600 FEET FROM SW CORNER OF PROJECTED SECTION 36, T9N, R7W, MDB&M, BEING WITHIN NW1/4 OF SW1/4 OF SAID SECTION 36 AND
- (2) NORTH 2,600 FEET AND EAST 750 FEET FROM SW CORNER OF PROJECTED SECTION 36, T9N, R7W, MDB&M, BEING WITHIN NW1/4 OF SW1/4 OF SAID SECTION 36.

OFFSTREAM STORAGE IN CUVAISON RESERVOIR IN SW1/4 OF NW1/4 OF PROJECTED SECTION 36, T9N, R7W, MDB&M.

### A DESCRIPTION OF LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

5 ACRES WITHIN SE1/4 OF NE1/4 OF PROJECTED SECTION 35, T9N, R7W, MDB&M  
10 ACRES WITHIN NW1/4 OF NW1/4 OF PROJECTED SECTION 36, T9N, R7W, MDB&M  
20 ACRES WITHIN SW1/4 OF NW1/4 OF PROJECTED SECTION 36, T9N, R7W, MDB&M

35 ACRES TOTAL

THIS LICENSE DOES NOT AUTHORIZE COLLECTION OF WATER TO STORAGE OUTSIDE OF THE SPECIFIED  
SEASON TO OFFSET EVAPORATION AND SEEPAGE LOSSES OR FOR ANY OTHER PURPOSE.

*Licensee shall allow representatives of the Board and other parties, as may be authorized from time to time by the Board, reasonable access to project works to determine compliance with the terms of this license.*

*Pursuant to California Water Code Section 100 all rights and privileges under this license, including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.*

*This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this license with a view to minimizing waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.*

*Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the Board.*

*The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.*

*This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:*

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: OCTOBER 31 1978

STATE WATER RESOURCES CONTROL BOARD

*M. A. Lembo*

Chief, Division of Water Rights

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FOR THE PROTECTION OF FISH AND WILDLIFE, LICENSEE SHALL BYPASS A MINIMUM OF 5 CUBIC FEET PER SECOND. THE TOTAL STREAMFLOW SHALL BE BYPASSED WHENEVER IT IS LESS THAN 5 CUBIC FEET PER SECOND.

NO WATER SHALL BE DIVERTED UNDER THIS LICENSE UNLESS LICENSEE HAS INSTALLED A DEVICE, SATISFACTORY TO THE STATE WATER RESOURCES CONTROL BOARD, WHICH IS CAPABLE OF MEASURING THE FLOW REQUIRED BY THE CONDITIONS OF THIS LICENSE. SAID MEASURING DEVICE SHALL BE PROPERLY MAINTAINED.

THE PROVISIONS OF THE ABOVE PARAGRAPHS APPLY TO DIVERSIONS FROM BOTH THE NAPA RIVER AND GARNETT CREEK, AND ARE BASED UPON A BILATERAL AGREEMENT BETWEEN LICENSEE AND THE DEPARTMENT OF FISH AND GAME, AND SHALL NOT BE CONSTRUED AS A FINDING BY THE STATE WATER RESOURCES CONTROL BOARD THAT THE AMOUNT OF WATER NAMED HEREIN IS EITHER ADEQUATE OR REQUIRED FOR THE MAINTENANCE OF FISHLIFE.

THE QUANTITY OF WATER DIVERTED UNDER THIS LICENSE IS SUBJECT TO MODIFICATION BY THE STATE WATER RESOURCES CONTROL BOARD, IF, AFTER NOTICE TO THE LICENSEE AND AN OPPORTUNITY FOR HEARING, THE BOARD FINDS THAT SUCH MODIFICATION IS NECESSARY TO MEET WATER QUALITY OBJECTIVES IN WATER QUALITY CONTROL PLANS WHICH HAVE BEEN OR HEREAFTER MAY BE ESTABLISHED OR MODIFIED PURSUANT TO DIVISION 7 OF THE WATER CODE. NO ACTION WILL BE TAKEN PURSUANT TO THIS PARAGRAPH UNLESS THE BOARD FINDS THAT (1) ADEQUATE WASTE DISCHARGE REQUIREMENTS HAVE BEEN PRESCRIBED AND ARE IN EFFECT WITH RESPECT TO ALL WASTE DISCHARGES WHICH HAVE ANY SUBSTANTIAL EFFECT UPON WATER QUALITY IN THE AREA INVOLVED, AND (2) THE WATER QUALITY OBJECTIVES CANNOT BE ACHIEVED SOLELY THROUGH THE CONTROL OF WASTE DISCHARGES.

THIS LICENSE IS SUBJECT TO THE CONTINUING AUTHORITY OF THE STATE WATER RESOURCES CONTROL BOARD TO IMPOSE FURTHER APPROPRIATE CONDITIONS TO CONFORM THE LICENSE TO BOARD POLICY ON USE OF WATER FOR FROST PROTECTION. ACTION BY THE BOARD WILL BE TAKEN ONLY AFTER NOTICE TO INTERESTED PARTIES AND OPPORTUNITY FOR HEARING.

*6-22-78 Asgd to Vince & Margorie Arroyo*

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